

STATE OF MISSISSIPPI



OFFICE OF THE STATE AUDITOR PHIL BRYANT AUDITOR

STATE AUDITOR'S REPORT

2007 MISSISSIPPI MUNICIPAL LEAGUE SMALL TOWN CONFERENCE

SILVER STAR CASINO PHILADELPHIA, MISSISSIPPI

OCTOBER 18, 2007

Presented By: Ronald Robinson, CPA

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I. PROGRAM INFORMATION

OBJECTIVES: The objective of this program is to educate participants about the legal responsibilities and personal liability of public officers when exercising duties related to managing public funds and property. Emphasis will be on accounting for and substantiating activities.

HOURS: Presentation time (including panel discussion) will be approximately one hour.

FIELD OF STUDY: Accounting and Auditing

INSTRUCTOR: The instructor is the primary author of the presented written material.

PROGRAM MATERIAL:
The written material represents requirements of the State Auditor's Office as the agency authorized by state law to prescribe accounting and auditing procedures. All program material is reviewed by the Department of Technical Assistance, State Auditor's Office. See program cover page for telephone number, address and additional information.

INSTRUCTIONAL METHOD:
Program will be presented orally and supported by detailed written material to coincide with presentation.

EVALUATION: Through out the program the instructor will recap presented material; and participates will be given opportunity to ask questions, comment and evaluate understanding. Participates may also contact the State Auditor's Office (Technical Assistance) to ask additional questions, further comment on, and offer additional evaluate the program.

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III. OATH OF OFFICE AND SURETY BOND OBLIGATION

Taking an oath of office and posting a required surety bond qualifies a person to assume the duties of a public office. This oath and bond require the person to faithfully perform these duties.

- A. **OFFICIAL OATH** – Elected and appointed officials take the following Oath of Office.

OATH OF OFFICE

[Section 268, Mississippi Constitution of 1890](#), provides:

All officers elected or appointed to any office in this state, except judges and members of the legislature, shall, before entering upon the discharge of the duties thereof, take and subscribe the following **oath**: "I, _____, do solemnly swear (or affirm) that I will faithfully support the Constitution of the United States and the Constitution of the State of Mississippi, and obey the laws thereof; that I am not disqualified from holding the office of _____; that **I will faithfully discharge the duties of the office** upon which I am about to enter. So help me God."

- B. **OFFICIAL SURETY BOND** – Surety bonds posted by elected and appointed official must be in the following form.

[Miss. Code Ann. Section 25-1-15 \(1972\)](#) provides:

(1) The bonds of all public officers required to give individual bond shall be conditioned in the following form, to-wit:

"Whereas, the above bound A B was duly elected (or appointed) to the office of _____ on the _____ day of _____, for the term of _____ years from the _____ day of _____; therefore, if he shall faithfully perform all the duties of said office during his continuance therein, then the above obligation to be void."

C. WHAT OFFICIAL DUTIES AND FAITHFUL PERFORMANCE MEAN

For a public official to satisfy the sworn obligation to public office, the duties of office and the meaning of faithful performance must be understood.

1. KNOW THE DUTIES OF OFFICE

- a. Officials must identify and understand the legal duties of their office. Research and education are the best methods
- b. Official should also know and respect the duties of other officers in the municipality (mayor, board members, chief of police, city clerk, etc.). Each officer is responsible for his or her duties, and should be free to exercise those duties without being subservient to the whims of another.
- c. Do not assume you know the duties of a public office. Misinformation and changing laws may result in misunderstanding of authority and responsibility. The oath of office and surety bond may result in personal liability and more importantly inability to provide public services.

2. UNDERSTAND WHAT FAITHFUL PERFORMANCE MEANS

a. General Explanation of Faithful Performance Expectation

Faithful performance is the level of accomplishment required of a public official in the performance of official duties. Accomplishment is measured in view of reasonable responsibility and effort.

What this means is a public official is expected to make a reasonable effort to know his or her duties and to perform those duties in a reasonable manner.

b. Legal Requirements of Faithful Performance

a. General Requirement - the action causing the breach is not one of a discretionary nature but is ministerial. [State v. McRael]
(this refers to a duty imposed by law to be carried out in a specific manner and under designated conditions).

b. Strict Requirement - a public official is an insurer of the safety of public money received by virtue of office and is liable in all cases of its loss. [Adams v. Lee] (This refers to public funds cash; you either have it or you don't).

- c. Dishonesty in Public Office Requirement - A state official (public official or employee) has a power to obtain monies (anything of value) wrongfully, it is the corruption of power that causes those monies to be obtained by virtue of office. [Gerrard V. State]
- d. Other Requirement - Diversion of public funds from their legitimate object. [Goldina v. Slater. et al]

IV. OFFICER'S LIABILITY RELATED TO DUTIES (Selected Laws)

§ **25-1-45**. Damages for neglect of duty (law most often used by the State Auditor)

If any county, county district, or municipal officer who has executed bond for the faithful performance of duty shall knowingly or wilfully fail, neglect, or refuse to perform any duty required of him by law or shall violate his official obligations in any respect, the president or, in the absence or disability or default of the president, the vice-president of the board of supervisors in case of a county or county district officer, and the mayor in case of a municipal officer, or any person interested in either case shall cause suit to be brought on the bond of such officer for the recovery of the damages that may have been sustained thereby.

CREDIT(S) Laws 1959, 1st Ex. Sess., Ch. 22, § 8, eff. from and after passage (approved December 23, 1959).

§ **21-35-17**. Liability for exceeding budget

Expenditures made, liabilities incurred, or warrants issued in excess of any of the budget detailed appropriations as originally and finally determined, or as thereafter revised by transfer as provided by this chapter, shall not be a liability of the municipality, but the official making or incurring such expenditure or issuing such warrant shall be liable therefore personally and upon his official bond. The governing authorities shall not approve any claim and the city clerk shall not issue any warrant for any expenditure in excess of said detailed budget appropriations as finally adopted, or as revised under the provisions of this chapter, except upon an order of a court of competent jurisdiction or for an emergency, as provided in this chapter. Any one or more of the governing authorities, or clerk, approving any claim or issuing any warrant in excess of any such budget appropriation, except as above provided, shall forfeit to the municipality twice the amount of such claim or warrant, which shall be recovered in an action against such member, or members, of the governing authorities, or clerk, or all of them, and the several sureties on their official bonds, and it shall be the duty of the governing authorities of such municipality, or the state auditor, as the head of the state department of audit, or the director thereof, appointed by him, or any taxpayer of such municipality, to bring an action therefore through the city attorney, or any attorney designated and empowered so to do by a court of competent jurisdiction.

CREDIT(S) Laws 1950, Ch. 497, § 8, eff. August 31, 1950.

V DUTIES OF MUNICIPAL OFFICIALS

A. FORM OF GOVERNMENT

The officers and the duties of the officers are different for each form of municipal government. Generally, most municipalities operate under a Code Charter; some medium population municipalities operate under a Council-Manager Plan, most large population municipalities operate under the Mayor-Council Form, and some older municipalities operate as under special charters. There are also Council and Commission form of government options.

State law (Title 21, Mississippi Code) defines all the forms of except the special charter. If a municipality has a special charter, the organization, authority and procedures presented in the special charter take precedent over general laws.

A good overview of the different state law forms of government may be found in Chapter III of the Center for Governmental Technology's publication (CGT) MUNICIPAL GOVERNMENT IN MISS. (see websites).

B. CODE CHARTER MUNICIPALITIES (FOR EXAMPLE)

Chapter 3 of Title 21 defines the operation of a code charter municipality. This chapter list the required officers of the municipality and their requirements, explains the duties of the mayor, and meeting procedures. Procedures and authorizations not specified in this chapter are subject to the state constitutional and general law. For example; general law Sec. 21-15-1, limits the term of office to four years, or until a successor is qualified.

(1) **MINIMUM OFFICERS (people with statutory duties):**

Section 21-3-3 explains the minimum officers required to operate are the mayor, board of aldermen, municipal clerk, municipal judge and chief of police. The mayor and aldermen must be elected. The other positions may be elected or appointed. Section 21-3-5 allows the same person to be appointed to two or more of the appointed positions if the population of the city is less than 15,000.

Municipal Judge and Prosecuting Attorney are required to be appointed in municipalities as provided by Sec. 21-23-3 and 21-3-5. Sec. 21-23-5 provides the mayor or mayor pro tempore be appointed to the municipal judge position; however due to Supreme Court ruling Grant, 631 So. 2d 758 (Miss. 1994) appointment of the mayor or mayor pro tempore to this position may not be made due to service as mayor and judge is contrary to the function of the judiciary.

Municipal Depositories are required to be commissioned (appointed) as provided by Sec. 27-105-353.

(2) **OPTIONAL OFFICERS:**

Tax Collector and Assessor are required by Sec. 21-3-3, with provision the duties may be combined with those of the municipal clerk or chief of police.

Street Commissioner may be created under Sec. 21-3-5; and a member of the board of aldermen may serve in this position.

Fire Marshall may be created under Sec. 21-25-1, and the mayor, any board member or the chief of police may serve in this position.

Chief Administrative Officer may be created under Sec. 21-3-25.

Clerk of the Municipal Court may be created under Sec. 21-23-11. If no appointment is made, the municipal clerk is the clerk of the municipal court.

Municipal Attorney may be appointed under Sec. 21-15-25.

(3) **DUTIES OF CODE CHARTER OFFICERS
(Mayor, Board, and General List)**

(a) **MAYOR:**

Preside over board meetings. Sec. 21-3-15

Deciding vote when equal board votes occur. Sec. 21-3-15

Superintend executive control of municipal officers and affairs.
Sec. 21-3-15

Take care that laws and ordinances are executed. Sec. 21-3-15

Veto option. Sec. 21-3-15

Approve minutes; when authorized by ordinance. Sec. 21-15-33

Sign Checks (or majority of board). Sec. 21-39-13

Appoint Extra Police Officers. Sec. 45-5-9

Write recommendations to the board. Sec. 21-15-7

Enforce laws and ordinances. Sec. 21-15-9

Enforce other officers to perform their duties. Sec. 21-15-9

File suit if other officer fail to perform duties. Sec. 25-1-45

Review records of other officers, and report to the board. Sec. 21-15-11

Call citizen aid (males 21 to 60) to enforce laws. Sec. 21-15-13

Vacate ordinance fines and penalties & report reasons(?) Sec. 21-15-15

Administer oaths. Sec. 11-1-1

Can **not** perform marriages, after March 13, 1994. Sec. 93-1-18

(b) **ALDERMEN: (Governing Authority)**

Quorum transact business at legal meetings.

Sec. 21-3-19, 21-3-21 & 25-41-1

Approve minutes, or delegate to mayor. Sec. 21-15-33

(The term governing body means the board of aldermen in
Sec. 21-15-33. A. G. No. 1999-0435)

- (c) **MAYOR AND ALDERMEN:**
The combined duties usually fall under state laws referring to "Governing Authorities" (or sometimes the municipality).

The term governing authority generally, means the mayor and board (See A. G. No. 93-0516). This refers to acts of the board of aldermen subject to the veto of the mayor.

GOVERNING AUTHORITY (SELECTED) DUTIES:

Appoint Code Charter officers. Sec. 21-3-5

Appoint judge & prosecuting attorney. Sec. 21-23-3

Appoint clerk of the court (optional). Sec. 21-23-11

Appoint fire marshal (optional). Sec. 21-25-1

Appoint police officers. Sec. 21-21-3

Establish departments: Fire Department. Sec. 21-25-3

Utility department (s). Sec. 21-27-23

Solid waste department & fees. Sec. 21-19-2

Animal control department. Sec. 21-19-9

Exercise the care, management and control of municipal affairs and its property and finances. Sec. 21-17-5

Determine function municipality will be involved in,

Set Office hours,

Assign property and space to departments, etc..

Exercise home rule authority (with exceptions). Sec. 21-17-5

Pass ordinances. Sec. 21-13-1

Appropriate funds for the operation of the city. Sec. 21-17-7

Approve claims for payment of obligations of the city. Sec. 21-39-9

Regulate to secure the general health of the city. Sec. 21-19-1 & 3

Regulate order and peace (Police Regulations). Sec. 21-19-15

Regulate transit vendors. Sec. 21-19-35

Exercise or establish procedures:

Demolish abandoned, drug or hazard/nuisance houses. Sec. 21-19-20

Private property cleaning. Sec. 21-19-11

Employees entering contracts. Sec. 25-1-43

Employee policies: Compensation. Sec. 21-3-5

Official travel. Sec. 25-3-41 & State Auditor

Petty cash funds. Sec. 7-7-60 & State Auditor

Personal & sick leave. Sec. 25-11-103 (i)

Health & other benefits. Sec. 25-15-101 & 103

Manage water flows through city (on private and public property).

Sec. 21-19-13

Contract collection agencies to collect delinquent fees and fines.

Sec. 21-17-1

Sell real (procedures) and personal property (policy). Sec. 21-17-1

Authorize donations where allowed by state law.

Real property to certain non profits. Sec. 21-17-1

Funds and property to school. Sec. 21-17-1 & 21-19-49

Allow police to work for schools. Sec. 21-19-49

Main Street Program &

economic development groups. Sec. 21-19-44 & 21-19-44.1

Exempt certain new enterprises from taxes. Sec. 21-19-43

Various organizations. Sec. 21-19-47, 51, 53, 55, 57, 59 & 65

(d) **OTHER OFFICERS:**

THESE INCLUDE PEOPLE REQUIRED BY LAW TO BE ELECTED OR APPOINTED TO PERFORM DUTIES SET OUT BY STATE LAW. THESE OFFICERS TAKE THE OATH OF OFFICE AND ARE PERSONALLY LIABLE FOR THE FAITHFUL PERFORMANCE OF THEIR DUTIES.

MUNICIPAL CLERK: (SEC. 21-3-3)

Keep the official minutes and seal.	Sec. 21-15-17
Keep the municipal docket (agenda).	Sec. 21-15-19
Keep ordinance record book	Sec. 21-13-13
Municipal Auditor: Keeps the accounting records.	Sec. 21-15-21
Receipt all money.	Sec. 21-15-21
Keeps budget records.	Sec. 21-35-11
Make monthly budget report to board.	Sec. 21-35-13
Keep money (when no depository).	Sec. 21-39-19
Keep accounting records and record of claims.	Sec. 21-39-5
Keeps claims docket.	Sec. 21-39-7
Keep credit card records	Sec. 21-39-27
Prepares and attest to warrants (checks).	Sec. 21-39-13
Administer oaths.	Sec. 11-1-1
Serve as Municipal Court Clerk (if on not appointed).	Sec. 21-23-11
Serve as election registrar (including county).	Sec. 23-15-35/223
Give notice of special elections.	Sec. 23-15-857/859
(As Tax Collector) Collect taxes.	Sec. 21-33-53
(As Tax Collector) Refund taxes.	Sec. 27-73-7
All other statutory duties (not listed).	

POLICE CHIEF: (SEC. 21-3-3)

Direct Police Department and Police Officers.	Sec. 21-21-1
Attend and execute orders of the court.	Sec. 21-23-13
Direct cleaning property notices.	Sec. 21-19-11
Execute police regulation ordinances.	Sec. 21-19-15
All other statutory duties (not listed)	

- (e) **DEPUTIES OF OFFICERS:** (Not officers themselves).
STATE LAWS ALLOW SOME OFFICERS TO HAVE DEPUTIES. DEPUTIES (GENERALLY) HAVE AUTHORITY TO EXECUTE UNDER THE DIRECTION OF THE POWERS OF THE OFFICER THEY SERVE. AUTHORITY DIFFERS FROM DUTIES OF AN OFFICER, IN THAT, A PERSON WITH AUTHORITY MAY EXECUTE A GOVERNMENTAL POWER, WHILE AN OFFICER WITH A DUTY, MUST REASONABLY PERFORM THE DUTY.
Deputy Municipal Clerk: Sec. 21-15-23,
Deputy Police Officers: Sec. 21-12-3 and Sec. 45-5-9

The officer with a duty is liable upon his/her bond for a loss resulting from a failure to faithfully perform the statutory duty. However, if the loss can be proven to result from the actions of a deputy who exercised an authority, the deputy's bond may cover the loss.

(f) **VACANT OFFICER POSITIONS:**

If an elected position becomes vacant, the governing authority has a duty to fill the position (Sec. 23-15-857). It is not proper to allow deputies to operate an office without the statutory officer. A loss of public funds due to an unfilled vacancy could be a liability of the governing authority.

VI. MUNICIPAL POLICIES

- A. Board Meeting Procedures
(How are motions made, how are votes taken, may the public speak, what is recorded in the minutes, who approves the minutes, etc.)
- B. Purchasing and Contracting Procedures
[Who may contract/purchase, how is the contract (purchase order, etc.) documented, who may declare emergency purchases]
- C. Employee Personnel Policy
How leave is earned and used, what holidays are paid and who works on holidays, how hourly pay is documented, how are employees hired and fired, etc.)
- D. Claim Verification Procedure
(1) Does the city owe this claim? (2) Who contracted the bill?
(3) Were the services received? (4) Were purchase laws followed?
(5) Is the payment within the budget, etc.)
- E. Budget Procedure
[Do procedures follow state law (Municipal Audit and Accounting Guide, etc.), who prepares a budget, do departments know what information to provide, who works out a timing schedule for publications and hearing, who calculates the necessary tax levy, etc.]
- F. Disaster Procedures
[Has the MEMA plan been adopted, who does what, are there contact points, where are resources available, are FEMA assistance requirements understood, what state laws have to be followed, etc].
- G. No Policy????
If the legislative branch (the board) fails to adopt a policy, the executive branch (mayor, other officers) should develop procedural policies.
- H. Form and Understanding of Policies
All policies should be in writing, distributed to those affected, and those affected should sign an acknowledgment of receipt and understanding.

VII.WHERE TO FIND INFORMATION

A. Why!

1. To know what power you have, what power other officers have and how to exercise it. What you **may** do
2. To know your duties. What you **must** do.
3. Board members who vote yes and those who abstain on a vote that passes are liable if the action is not legal.

B. Who!

1. Board Attorney
2. State Auditor's Technical Assistance – Audit Positions
3. Attorney General's Opinion Attorneys – Formal Opinions
4. CPA/Auditor – Audit Findings and Suggestions
5. Mississippi Municipal League – Advice, Coordination, Training
6. Other City Official (Former, Other Cities, etc.) – Been there
7. Center For Governmental Technology, MSU – Training, Guides
8. Computer Service Company, etc. - How things work, etc.

C. Where!

1. Reference Books – Miss. Code, State Auditor's Municipal Audit and Accounting Guide and monthly Technicality publication, Ms. State's Center for Governmental Technology's "Municipal Government in Miss" and other publications.
2. Telephone –
State Auditor – (800) 321-1275,
Attorney General - (601) 359-3680
3. Internet – See Following List.

INTERNET WEB SITES YOU NEED TO KNOW

LEGISLATIVE BILLS:	http://billstatus.ls.state.ms.us
MISSISSIPPI CODE:	http://www.sos.state.ms.us/ed_pubs/mscode/
ATTORNEY GENERAL OPINIONS:	http://www.agopin.state.ms.us
ETHICS COMMISSION OPINIONS:	http://www.ethics.state.ms.us/ethics/ethics.nsf
DFA TRAVEL REGULATIONS:	http://www.dfa.state.ms.us/Offices/PurTrav/Purchasing.htm
STATE AUDITOR'S OFFICE:	http://www.osa.state.ms.us
ARCHIVES RECORDS:	http://www.mdah.state.ms.us/locgov/localgov.html
STATE RETIREMENT SYSTEM:	http://www.pers.state.ms.us/
STATE OF MISSISSIPPI:	http://www.ms.gov/
MISSISSIPPI MUNICIPAL LEAGUE	http://www.mmlonline.com/
MUNICIPAL GOVERNMENT IN MISS. PUBLICATIONS, TRAINING, ETC. (Center for Governmental Training and Technology, Extension Service, Miss. State University) (Latest Website)	http://msucares.com/community/governmental/ http://cgt.msstate.edu/list_of_pub.html

VIII WHERE TO FIND TRAINING

- A. **Why?** Trained officials (mayor, board/council members, city clerks, etc.) and employees are better able to serve the public. Can live up to your political promises, etc.?
1. Learn what you can do and how to do it (you may be surprised).
 2. Learn what the other officers in the city can do (team work).
 3. Learn how to protect the city and yourself from liability.
 4. Good intentions are not enough to get the job done.
- B. **Where?** Training for city personnel is available.
1. Mississippi Municipal League – offers training at conferences and conducts a Certified Municipal Officer program.
 2. Center for Governmental Technology, MSU – provides a Certified City Clerk program, and occasional designed training (new officials, etc.).
 3. Miss. Association of Governmental Purchasing and Property Agents – offers training for purchasing and property officers.
 4. Miss. Judicial College, University of Miss. – Trains court personnel.
 5. Miss. Dept. of Insurance – Trains fire fighters.
 6. Board on Law Enforcement Officer Standards and Training – establishes required training for law enforcement officers.
 7. Other State Agencies – State Treasurer, Secretary of State, Dept. of Natural Resources, Health Dept., State Auditor, Attorney General, etc. – offer training as required by law of need.
 8. Other sources of Training (CPA firms, municipal organizations, federal government, etc.) also offer training beneficial to municipal personnel.
- C. **How?** A municipality may budget and pay for any training of municipal officer or employees. The only requirement is the training must pertain to the officers' or employees' duties, or be required by state law.

IX SELECTED ATTORNEY GENERAL'S OPINIONS

THE TERM "GOVERNING AUTHORITY"

Office of the Attorney General State of Mississippi **I* May 10, 1990

Edwin C. Hardin, Esquire Attorney for Town of McLain

Post Office Box 737 Leakesville, Mississippi 39451

Dear Mr. Hardin:

Attorney General Mike Moore has received your letter of request and has assigned it to me for research and reply. Your letter states:

"Questions have arisen as to the duties and powers of the offices of mayor versus aldermen in the town of McLain. McLain is an incorporated town of 750 people operating under a code charter. Specifically, the major questions have arisen over who hires town employees (including police) and who is to direct their day to day activities and operations.

The recent problems of Laurel with the resulting court opinions printed in the paper have caused confusion in this area too. It is my understanding that Laurel operates under a mayor-council form of government.

Specifically, their questions are:

1. What are the mayor's powers and duties?
2. What are the aldermen's powers and duties?
3. Who hires and fires town employees?
4. Who directs town employee's day to day operations?"

Generally, the mayor is the chief executive officer of the municipality and the board of aldermen is the legislative body of the municipality. **Together the mayor and board of aldermen constitute the "governing authorities"**. When a particular statute empowers the "governing authorities" to act it means that the board of aldermen of a code charter municipality acts subject to the mayor's veto. The specific duties of the mayor and the "governing authorities" are spread throughout Title 21, Mississippi Code Annotated (1972) and are too numerous to list in this opinion. Section 21-3-15 is a general statement as to the powers of a mayor of a code charter municipality.

Section 21-3-5 specifically authorizes the "mayor and board of aldermen" to appoint municipal officers and employees and to "prescribe the duties and fix the compensation of all such officers and employees". It further provides that all officers and employees hold their jobs "at the will and pleasure of the governing authorities". This, in our opinion, means that the board of aldermen hires and fires subject to the mayor's veto provided for in section 21-3-15 supra.

As the chief executive officer of the municipality, the mayor has superintending control of municipal officers and employees. The daily operation of the municipal government would be supervised by the mayor to insure that proper services are provided.

Sincerely, Mike Moore Attorney General 1990 WL 547751 (Miss.A.G.)

See court case attached to the Attorney General's Opinion No. **93-0516** August 5, 1993 addressed to Ron Crowe, Miss. Ethics Commission.

The term "governing authorities" must be viewed as a generic term which simply means the entity that has the power to perform the specific task.

EXECUTIVE AUTHORITY

Office of the Attorney General State of Mississippi *1 Opinion No. 2006-00248 June 16, 2006

Re: **Authority of Mayor to Direct Communications of
Municipal Department Heads and Employees**

Mr. Bobby Goddard Alderman 203 N. Main Street Booneville, Mississippi 38829

Dear Mr. Goddard:

Attorney General Jim Hood has received your request for an official opinion and has assigned it to me for research and response. Your letter reads as follows:

I am one of the Aldermen of the City of Booneville, Mississippi. Booneville is a code-charter municipality. I request an official opinion on the following issue:

I understand that the **Mayor** of Booneville indicates that he intends, in the future, to impose his own policy of requiring that City department heads and **employees** not have contact or conversation with individual aldermen, outside of official meetings. I question whether a **Mayor** has such power or **authority**. Please issue your official opinion as to whether such a proposed unilateral policy is a proper exercise of mayoral power or **authority**.

* * * * *

We assume for purposes of this opinion that the proposed policy would seek only to limit or restrict contact or conversations which are related to city business, and would not seek to limit all contact between department heads or **employees** and aldermen.

[Section 21-3-15 of the Mississippi Code of 1972](#), as amended, sets forth the powers of a **mayor** in a code-charter **mayor**/alderman form of government. That section provides that the **mayor** "shall have superintending control of all the officers and affairs of the municipality, and shall take care that the laws and ordinances are executed." Under this **authority**, our office has opined that the **mayor** has supervisory **authority** over municipal **employees**. **Aldermen have no authority to become involved in the day-to-day functioning of municipal departments, but are entitled to act as advisors and observe city departments, including asking questions of municipal employees and gathering information for the purpose of reporting back to the Board as a whole.** MS AG Op., Rupp (August 17, 2001); MS AG Op., Hutcherson (March 8, 1995); MS AG Op., Patten (October 30, 1985).

The 2006 Legislature enacted amendments to [Section 21-3-15](#) (SB 2832). Effective July 1, 2006, the amendments clarify the executive nature of the **mayor's authority** and the legislative nature of the actions of the aldermen, providing, in part, as follows:

(1) The **mayor** shall preside at all meetings of the board of aldermen, and in case there shall be an equal division, shall give the deciding vote. The **mayor's authority** is executive, and the **mayor** shall have the superintending control of all the officers and affairs of the municipality, and shall take care that the laws and ordinances are executed.

(2)(a) The **authority** of the board of aldermen is legislative and is executed by a vote within a legally called meeting. No member of the board of aldermen shall give orders to any **employee** or subordinate of a municipality other than the alderman's personal staff. *2 [Emphasis added].

This amendment clearly establishes what the Attorney General has consistently held by opinion,

that individual aldermen are not to become involved in the **day-to-day** functions of city departments or give direction or provide supervision to municipal **employees**. This amendment does not, in the opinion of this office, make it unlawful for aldermen to ask questions of municipal **employees** or to seek information regarding municipal departments for the purpose of making a report to the full board or for the purpose of taking appropriate legislative action. Members of a municipal board of aldermen have the right, and in fact the duty, to inform themselves to the best of their ability on matters relevant to the conduct of city business. MS AG Op., Balch (February 18, 1993).

Pursuant to his or her powers as executive officer of a municipality, **a mayor has the authority to enact policies related to the overall supervision of employees and department heads and to give directives to the employees or department heads regarding their duties.** To the extent, however, that a policy or directive adversely impacts the ability of the legislative branch to obtain information necessary to make decisions and to carry out the business of the city, such policies would be contrary to the statutory scheme set out for the **mayor**/alderman form of government. If our office may be of further assistance, please advise.

Sincerely, Jim Hood Attorney General

By: Heather P. Wagner Assistant Attorney General Office of the Attorney General

Office of the Attorney General
State of Mississippi

Opinion No. 2004-0390

***I** August 6, 2004

Re: Authority of Mayor; Agenda; Supervision of City Clerk

Mayor Mary Young
Town of Kilmichael
Post Office Box 296
Kilmichael, Mississippi 39747
Dear Mayor Young:

Attorney General Jim Hood has received your request for an official opinion and has assigned it to me for research and response. You present several basic questions to us for consideration. First, you ask what authority the Mayor has to control matters appearing the **agendas** for meetings. Second, you ask whether the Board of Aldermen can allow the City Clerk to report to the Board during meetings as a Department Head. Finally, you inquire as to the Mayor's authority over the City Clerk when the Clerk refuses to honor the Mayor's request to be provided with all information being placed on the **agenda** in a timely fashion.

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The Town of Kilmichael operates under a mayor-alderman form of municipal government, and therefore, is controlled by [Section 21-3-1 et seq. of the Mississippi Code](#). In response to your first question, the mayor under this form of government has the responsibility to preside over meetings and to insure that each meeting proceeds in an orderly manner. [Miss. Code Ann. Section 21-3-15](#); MS AG Op., Parham (August 10, 2001). **It is the responsibility of the city clerk to keep the municipal agenda.** [Miss. Code Ann. Section 21-15-19](#). The mayor does not have the sole right to remove matters from the **agenda**, or to establish the order of the **agenda**, or to control the manner in which the **agenda** is developed, in that a majority of the board of aldermen control the **agenda**. MS AG Op., Belk (January 16, 2004). Any policy adopted by a majority of the board with regard to the maintenance of the **agenda** and the manner in which items are placed on the **agenda** would be controlling. Even in the absence of a policy, if a majority of the board approve the **agenda**, its decision is controlling. **Both the mayor and members of the board have the authority to place items on the agenda of a municipal meeting.** The mayor and aldermen have the right to review the **agenda** at any time prior to the meeting in order to **prepare** for the meeting. MS AG Op., Stovall (January 6, 2004). Any affirmative action of the board of aldermen is subject to mayoral veto. [Miss. Code Ann. Section 21-3-15](#); MS AG Op., Brown (July 1, 2004).

This office has recognized the position of an appointed city clerk as a department head. MS AG Op., Martin (November 7, 1997). The mayor exercises “superintending control” over municipal employees and affairs, and this includes supervisory authority over department heads. [Miss. Code Ann. Section 21-3-15](#). The board of aldermen does not have the authority to direct the daily activities of the clerk. MS AG Op., Baker (November 1, 1995). However, by majority vote, the board may allow the city clerk to address the board at a meeting, just as the board may allow any member of the public or municipal employee to address the body.

***2 Finally, as stated above, as a department head, the city clerk is subject to the supervision of the mayor. If the clerk refuses to provide to the mayor information related to the **agenda**, after being asked to do so, the clerk may be disciplined in accordance with policies adopted by the governing authorities.** The board has no authority to become involved in the day-to-day operations of the clerk's office or otherwise interfere with the supervisory authority granted to the mayor by [Section 21-3-15](#). MS AG Op., Baker (November 1, 1995). Sole authority to remove the clerk from office or to suspend the Clerk without pay lies with the Board.

If our office may be of further assistance, please advise.

Sincerely,
Jim Hood
Attorney General

By: Heather P. Wagner
Assistant Attorney General

2004 WL 2031661 (Miss.A.G.)

X SELECTED NEW LAWS FOR 2007

Web Site Location: <http://billstatus.ls.state.ms.us>

EXPOSING ANOTHER TO CERTAIN BODILY FLUIDS

House Bill 432, effective 7/1/07 revises Section 97-27-14 to make it a felony to knowingly expose another to HIV, hepatitis B or C.

This bill also creates a new misdemeanor violation of "endangerment by bodily substance". This violation occurs when a prisoner causes contact with saliva, urine, blood, feces, or seminal fluid.

GRAND JURY CASES TRANSFERRED TO MUNICIPAL COURT

House Bill 443, effective 7/1/07 revised Section 99-33-1 and 99-33-13 to allow cases to be transferred to and tried as misdemeanors in municipal court.

UNIFORM ASSESSMENT INCREASE – FINAL BILL

House Bill 665, effective 7/1/07 revised Section 99-19-73 to increase the uniform assessment to fund the Statewide Victims' Information and Notification System. Also, see H. B. 1498 and S. B. 2686 for other increases to this court assessment.

EMBEZZLEMENT FINE INCREASE

House Bill 710, effective 3/15/07 revised Section 97-23-19 to increase the felony maximum fine from \$ 10,000 to \$ 25,000 for embezzlement; and clarified that embezzlement applies to property entrusted by virtue of a position.

HOLIDAY PAY FOR LAW ENFORCEMENT OFFICERS

House Bill 781, effective 7/1/07 revised Sections 21-17-5 (and 19-3-63 for counties) to require municipalities to enact leave policies to ensure public safety employees are paid or granted compensatory time for holidays that is equal to other employees.

FEDERAL FUNDS EXPENDITURE AUTHORITY

House Bill 856, effective 7/1/07 revised Section 21-17-1 (11) to allow municipalities to perform functions and deliver services allowed in federal grants, loans or other monies which are not specifically prohibited by state law.

This language also appears in House Bill 1150.

PURCHASING - BID SOLICITATION INCREASE

House Bill 1012, effective 3/20/07 (final bill, 7/01/07 - S. B. 2375) revised Section 31-7-13 to increase the range when certain purchases must be made pursuant to bid solicitations. Purchases over \$ 5,000 to \$ 25,000 require two quotes. Purchases over \$ 25,000 must be advertised of offers.

PURBLIC EMPLOYEES' RETIREMENT SYSTEM (PERS)

House Bill 1016, effective 7/1/07 revised various laws to require employees with start date of 7/1/07 and after to have eight years service to vest an interest in PERS.

TRAFFIC FINE COLLECTION BY IMMOBILIZING VEHICLE; AND PARKING RESTRICTION SIGNS

House Bill 1079, effective 7/1/07 revised Section 21-19-15 (the police regulation law) to add authority for an **ordinance** to provide for the manner and means of **immobilizing** a motor vehicle due to the record owner's failure to pay **traffic or parking fines** totalling over \$ 200.

This bill also prohibits enforcement of a parking ordinance unless a sign explaining the restriction is posted within 200 feet.

Notes: A. G. Opinion to Larry J. Bennett, dated January 27, 1982 explains Supreme Court limitations on sentencing an indigent defendant to jail for failure to pay a fine.

LOCAL TRAFFIC COURT ASSESSMENT

House Bill 1114, effective 7/1/07 creates a new law (Coded as Section 63-9-33) to allow municipalities with a population of 15,000 or more to impose an up to \$ 1.00 assessment on each traffic offence conviction (including parking and registration). This money must be budgeted to the police department for computerized crime prevention.

DONATION OF REAL PROPERTY

House Bill 1150, effective 7/1/07 revised Section 21-17-1 to provide additional authority for a municipality to convey unneeded blighted real property it received by tax sale, abandonment/blight, or lien. Such property may be conveyed to anyone on municipal terms (sale/donate without appraisal/bids/advertisement). The terms must determine community improvement within two years or sale is reverted; and costs will be paid by purchaser. This bill also allows 25 foot or less frontage lots to be conveyed to be evenly donated to adjoining property owners who pay the costs of conveyance. This bill also includes the House Bill 856 language. A similar authority was granted to counties under Senate Bill 2385 (Sec. 19-7-3).

LAND REDEMPTION FEE INCREASE

House Bill 1164, effective 7/1/07 revised Section 25-7-21 (4) (f) to increase the fee from one per cent to three per cent for the total "amount necessary to redeem". Section 27-43-3 was also revised to increase the fee from \$ 20 to \$ 50 for searching records to identify who must receive notice that the time to redeem property is about to expire. This redemption process applies to counties and municipalities (Sec. 27-45-11).

BAILBONDSMAN CAN'T BE JAILER, ETC.

House Bill 1485, effective 6/1/07 revised Section 83-39-3 to prohibit a person (employee, contractor, etc.) of a facility that houses state, city, or county prisoners from being a bail bondsman.

PASSING EMERGENCY VEHICLE IMPROPERLY

Senate Bill 2057, effective July 1, 2007 revised Section 63-3-809 to create a criminal offence for failure (when possible) to slow down and move over a lane when passing an emergency, highway maintenance or recovery vehicle. This bill also imposes liability for resulting property and personal damages.

KATRINA DAY – ANNUAL

Senate Bill 2069, effective 7/1/07 creates a new law to recognize August 29 each year as "Katrina Day of Remembrance". (This is not a paid holiday).

OPEN MEETINGS

Senate Bill 2081, effective 7/1/07 revised Section 25-41-5 to allow teleconference (video) meetings without requiring a quorum to be physically located at one place. The requirement for a thirty day notice of the video meeting was reduced to a five day notice.

REWARD INCREASE

Senate Bill 2102, effective 7/1/07 revised Section 99-3-39 to increase the amount a municipal board/council (and counties) may offer as a reward for information leading to the apprehension and criminal conviction of a person from \$ 2,500 up to \$ 15,000.

TOLL ROADS * AND * FINAL PURCHASE LAW

Senate Bill 2375, effective when approved by the federal justice department created new laws to authorize the Miss. Transportation Commission, counties and municipalities to fund, construct and operate toll roads. This bill also included the final revision to the purchase law to confirm two quotes will be required for purchases over \$ 5,000 to \$ 25,000 and advertised solicitation of bids will be required for purchase over \$ 25,000 (See H. B. 1012).

VEHICLE AD VALOREM TAX EXEMPTION FOR MILITARY

Senate 2403, 1/1/07 creates a new law to allow (optional) the municipal governing authorities to grant a \$ 50 (non school) ad valorem tax exemption to one motor vehicle owned by an active (Iraq or Afghanistan) duty military member. Counties may grant up to \$ 100.

DRIVING UNDER THE INFLUENCE

Senate Bill 2454, effective 7/1/06 revised Section 63-11-30 to require first offence defendants to attend the alcohol safety education program (MASEP) to have their driver's license reinstated by the Dept. of Public Safety (alternative one year suspension option was deleted).

CITY YOUTH COURTS

Senate Bill 2477, effective 7/1/07 revised various laws related to youth court; including the prohibition of new municipal youth courts after 1/1/07.

CAP LOAN AUTHORITY

Senate bill 2508, effective 7/1/07 revised to Section 57-1-303 to extend the repeal date to July 1, 2010.

CRIMINAL OFFENDER RECORDS

Senate Bill 2512, effective 7/1/07 revised Section 45-27-1 & 7 to clarify Miss. Justice Information Center record provisions. Also included is a requirement that any criminal justice department or agency expending over \$ 5,000 in a year on software or programming upgrades must ensure the upgraded system is formatted to Dept. of Justice SML format and includes data sharing software.

SHERIFF FEEDING RESQUE HELP

Senate Bill 2516, effective 7/1/06 revised Section 19-25-13 to allow the Board of Supervisors to include up to \$ 1,000 in the sheriff's budget to feed deputies and others while in rescue missions, disaster or other emergency operations.

NEW LITTERING ASSESSMENT

Senate Bill 2549, effective 7/1/07 revised Section 97-15-29 to impose an additional state assessment when there is a conviction under this law (littering things or substances likely to ignite grass or underbrush). This assessment is in addition to the Other Misdemeanor and Litter Law assessments under Section 99-19-73 and all other assessments, court costs and fines. The amount of this new assessment is \$ 50. This assessment will be settled to the Dept. of Finance and Administration (like Uniform Assessments); the DFA settlement code will be ALA (see page 23 "Additional Littering Assessment").

NEW DEAD ANIMAL LITTERING LAW

Senate Bill 2549 also creates a new law to establish a crime and penalty for disposing or dumping dead wildlife, parts or waste on property (roads, lakes, streams, private, etc.) without permission (civil damage authority and a misdemeanor penalty is included).

JURY SERVICE

Senate Bill 2646, effective 1/1/08 revised various jury qualification, duty, compensation, etc. procedures. Included is a provision for an elderly person to be permanently excused from jury service by filing with circuit clerk.

BAIL BOND REQUIREMENTS

BAIL BOND TO ASSURE CONDITIONS AND FINE PAYMENT

Senate Bill 2756, effective 7/1/07 revised Section 99-5-1 (the form law) to require specified clear legible information on the bond form; subject to penalty.

Section 99-5-9 was also revised to provide a professional bail agent ¼ of required cash bond alternative bond.

Section 99-5-39 was created to allow a court to require a defendant to post an appearance bond filed by a bail bondsman to assure compliance with conditions of probation, community control, payment plan for a fine or other court ordered supervision.

POLICE OFFICER SUSPENSION PROCEDURE – VETOED

Senate Bill 2760 was vetoed and therefore, not passed.

STUN GUN CONCEALED WEAPON PERMIT

Senate Bill 2772, effective 7/1/07 revised Section 45-9-101 to include defined stun guns in the requirement to have a concealed weapon license. [Failure to carry license is a **non criminal violation with a \$ 25 penalty**, enforced by summons].

JUVENILE DETENTION NOTICE TO SCHOOL AND EDUCATION

Senate Bill 2818, effective 4/21/07 revised Section 43-21-321 to require detention centers to notify a juvenile's school of their detention. Other laws were revised to provide for the education of detained juveniles.

INVESTMENT OF PUBLIC FUNDS AUTHORITY

Senate Bill 2830, effective 3/22/07 revised Section 21-33-323 (cities), 19-9-29 (counties) and other investment laws to allow and establish qualifications for investments "through" depositories.

ELECTIONS

Senate Bill 2831, effective upon approval of federal justice dept. revised various laws related to elections. Among other changes, runoffs will be three weeks after an election.

SCHOOL STATE OF EMERGENCY

Senate Bill 2960, effective when approved by the federal justice dept. revised various laws to address procedures for emergency control of school districts, etc..

SCHOOL POLICE OFFICER AUTHORITY

Senate Bill 3015, effective 7/1/07 revised Section 37-105-3 to vest law enforcement officers of Jackson State University and University of Southern Miss. with the authority of a constable on campus and within 500 feet of school property. Section 37-29-275 was also revised to grant similar authority to officers of community colleges.

DOMESTIC VIOLENCE PROCEDURES AND FEES

Senate Bill 3036, effective 7/1/07 revises various laws to clarify and impose procedures for domestic violence charges.

Municipal Courts were removed from the list of court authorized to issue protective orders. These orders will only be issued by county (justice, chancery, and circuit courts).

Included in this bill is a requirement that a county use a uniform protection order form prescribed by the Attorney General. The bill also requires a one dollar fee be collected as part of the county court cost when a protective order is issued. This fee will be settled to the Dept. of Finance and Administration (like Uniform Assessments); the settlement code is expected to be POF.

WATER SEWER SERVICE DENIED WHEN CHARGES DELINQUENT

Senate Bill 3049, effective 7/1/07 prohibits a county, city or water sewer association water sewer system from granting service to a person who has an undisputed delinquent bill for services he/she received from another water sewer system. [A. G. Opinion June 8, 2007 to Debora Holloway explains how information regarding customer accounts may be shared with other utility systems and associations for this purpose.]

XI DELINQUENT AUDIT REPORTS

October 1, 2007

Mayor and City Clerk

Dear Mayor and City Clerk:

Section 7-7-211, Mississippi Code Annotated (1972) provides the State Auditor the authority to audit any governmental entity in the state with the exception of municipalities. In the case of municipalities, Section 21-35-31, Mississippi Code Annotated (1972), requires municipalities to obtain an annual audit performed by a private CPA firm and submit that audit report to the State Auditor prior to the close of the next succeeding fiscal year. Hence, all reports prior to and including fiscal year ending September 30, 2006 should have been filed with the State Auditor by today.

The Mississippi Office of the State Auditor is responsible for reviewing the annual reporting for all municipalities in the State of Mississippi. Our office has notified each municipality by mail on several occasions of the annual reporting requirements. Our records indicate that we have not received your annual reports for the fiscal year ending September 30, 2003, 2004, 2005 and 2006.

Section 7-7-218, Mississippi Code Annotated (1972) provides the State Auditor with the authority to “proceed to make the report or cause the report to be made” for any officer or employee of the municipality that has refused or failed to make any report to our office. State law further provides that the “expense for such report shall be personally borne by said officer or employee”. In addition the Attorney General’s Office has opined that if an officer or employee of the municipality fails or refuses to make any report, that failure or refusal constitutes a breach of his or her faithful performance of duty and recovery may be sought from the applicable bond.

Please notify our office by mail and provide us any information in regard to audits pending. If you have any questions, you may reach the Division of Technical Assistance at 1-800-321-1275.

Sincerely,

W. Edward Smith, CPA
Manager, Technical Assistance